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**IN THE
COURT OF APPEALS OF INDIANA**

KEVIN D. PROPHET,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 02A03-0612-CV-590
)	
SNOW & SAUERTEIG, LLP,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE ALLEN SUPERIOR COURT
SMALL CLAIMS DIVISION
The Honorable Jennifer L. DeGroote, Magistrate
Cause No. 02D01-0511-SC-22615

May 18, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Kevin Prophet appeals the Allen County small claims court's entry of judgment against him in the amount of \$2,898.66. We affirm in part, reverse in part, and remand.

Issue

Kevin raises several issues on appeal, which we consolidate and restate as whether the small claims court properly applied the doctrine of necessities.

Facts

Snow & Saurteig, LLP ("Snow") is the assignee of certain medical and dental accounts from Dupont Oral & Maxillofacial Surgery, P.C.; Lutheran Hospital of Indiana, Inc.; Summit Radiology, PC; Fort Wayne Orthopaedics, LLC; Dupont Hospital; and Fort Wayne Ob-Gyn Consultants, LLC. These accounts consist of unpaid bills from the treatment of Susan Prophet and V.P., Kevin and Susan's minor child.

Snow filed suit against Kevin and Susan in Allen County small claims court for collection of these unpaid bills.¹ At the small claims trial, Snow submitted affidavits from the medical and dental providers. Each affidavit set forth the dates of treatment and

¹ The trial took place in small claims court, and there is no transcript of the proceedings. Indiana Appellate Rule 31 provides:

If no Transcript of all or part of the evidence is available, a party or the party's attorney may prepare a verified statement of the evidence from the best available sources, which may include the party's or the attorney's recollection. The party shall then file a motion to certify the statement of evidence with the trial court or Administrative Agency. The statement of evidence shall be attached to the motion.

The parties did not provide a statement of evidence for appellate review. However, we will consider the parties' briefs and the appendix to discern the proceedings at the trial.

the total amount owed. Kevin submitted an affidavit stating that he was currently unemployed, he did not receive medical services from any of Snow's assignors, no agreement existed between him and the assignors regarding payment for services rendered, and his financial position was not superior to Susan's. Kevin also testified that Susan was incarcerated.²

The small claims court issued a written order of judgment. The court stated: "As the Defendant's wife is currently incarcerated, the Court has no reason to believe that she has the ability to satisfy these outstanding medical expenses, and therefore, the Plaintiff may seek from her spouse, under the Indiana Doctrine of Necessaries, outstanding amounts and interest due and owing." The court found Kevin liable for all of Susan and V.P.'s medical and dental bills, which totaled \$2,898.66 in principal and interest. The court declined to enter a default judgment against Susan because she was not served with a notice of claim due to her incarceration. Kevin now appeals.

Analysis

Judgments in small claims actions are "subject to review as prescribed by relevant Indiana rules and statutes." Ind. Small Claims Rule 11(A). Under Indiana Trial Rule 52(A), we apply the clearly erroneous standard to review of facts determined at the trial, giving regard to the trial court's assessment of witness credibility. Trinity Homes v.

² Kevin's brief states that he also testified regarding Susan's financial superiority despite her incarceration. Snow's brief states that Kevin merely testified that Susan was incarcerated. Kevin's brief further states that he testified that Susan's dental care was cosmetic and, therefore, not necessary. Snow does not confirm or refute that this testimony occurred. Neither of these statements is critical to the outcome of our decision.

Fang, 848 N.E.2d 1065, 1067 (Ind. 2006). The deferential standard for the review of facts “is particularly important in small claims actions, where trials are ‘informal, with the sole objective of dispensing speedy justice between the parties according to the rules of substantive law.’” City of Dunkirk Water & Sewage Dep’t v. Hall, 657 N.E.2d 115, 116 (Ind. 1995) (quoting S.C.R. 8(A)). However, this deferential standard is not applied to substantive rules of law, which are ruled de novo. Trinity Homes, 848 N.E.2d at 1067. “Similarly, where a small claims case turns solely on documentary evidence, we review de novo, just as we review summary judgment rulings and other ‘paper records.’” Id.

Kevin argues that the court improperly applied the doctrine of necessities in that no proof was presented as to the necessity of the treatment received by Susan and V.P. and because Kevin was not the financially superior spouse.

The common law doctrine of necessities evolved as a means by which a husband’s duty to support his dependent wife could be enforced. Hall v. Hall, 694 N.E.2d 1168, 1170 (Ind. Ct. App. 1998). Under this doctrine, a husband was responsible for necessary goods and services furnished to his wife by third parties. Id. In Bartrom v. Adjustment Bureau, Inc., 618 N.E.2d 1, 8 (Ind. 1993), our supreme court considered the continuing validity of the doctrine of necessities and determined that the common law rule should be modified to apply on a gender-neutral basis. The court held:

the doctrine of necessities operates in Indiana as follows. Each spouse is primarily liable for his or her independent debts. Typically, a creditor may look to a non-contracting spouse for satisfaction of the debts of the other only if the non-contracting spouse has otherwise agreed to contractual liability or can be said to have authorized the debt by implication under the laws of agency. When, however, there

is a shortfall between a dependent spouse's necessary expenses and separate funds, the law will impose limited secondary liability upon the financially superior spouse by means of the doctrine of necessities. We characterize the liability as "limited" because its outer boundaries are marked by the financially superior spouse's ability to pay at the time the debt was incurred. It is "secondary" in the sense that it exists only to the extent that the debtor spouse is unable to satisfy his or her own personal needs or obligations.

Id. at 8.

Kevin's affidavit stated that he had not contractually agreed to pay for the medical care, and Snow does not dispute this. Therefore, if Kevin were the financially superior spouse, he would be liable for the necessary medical and dental expenses only to the extent that Susan could not pay and limited by Kevin's ability to pay at the time the debt was incurred.

Kevin asserts that the small claims court could not have concluded that he was the financially superior spouse because he testified that Susan was financially superior, and no other evidence was presented. Kevin submitted an affidavit stating that Susan was the financially superior spouse. Snow did not present any affidavits concerning Susan's financial status.

Neither party suggests that Snow provided any evidence as to Susan's ability to pay.³ Her inability to pay is a clear requirement for invoking the doctrine of necessities against Kevin. Further, to impose liability upon Kevin, the court would have needed to find that Kevin had the ability to pay for each treatment at the time it occurred. Neither

³ Although Susan is incarcerated, there is no evidence that she lacked other assets that could be used to pay the debt.

party presented evidence to support or oppose this, and the court made no such finding. We conclude that under these circumstances the court's application of the doctrine of necessities was clearly erroneous.

As to V.P.'s medical bill, however, a different analysis applies and we reach a different conclusion. In Schmidt v. Mutual Hospital Services, 832 N.E.2d 977, 980 (Ind. Ct. App. 2005), we unequivocally stated that parents are responsible for the well-being of their children, and it is "fundamental" that a parent provide medical care for a child. See also St. Mary's Med. Ctr. v. Bromm, 661 N.E.2d 836, 837 (Ind. Ct. App. 1996) (noting that a parent's duty to provide support for his minor child includes the provision of "reasonable and necessary medical services").

In Schmidt, we held that parents who, due to religious objection, refused consent for treatment of their daughter's illness were nevertheless obligated to pay for the medical treatment she received. Schmidt, 832 N.E.2d at 983. In Bromm, the non-custodial parent of a teenage girl specifically told his ex-wife and daughter that he would not pay for any medical expenses if his daughter became pregnant. His daughter subsequently did become pregnant, resulting in approximately \$16,000 of pre-natal and childbirth expenses. Bromm, 661 N.E.2d at 837. We held that his non-consent "[did] not relieve him from his obligation to pay for the medical services provided to his child." Id. at 838.

The affidavit and accompanying exhibit from Lutheran Hospital of Indiana shows that on July 2, 2002, V.P. received medical treatment in the emergency room. She was given acetaminophen with codeine. This affidavit provides information sufficient for us to infer that this was a reasonable and necessary expense for V.P.'s medical care. We

conclude that Kevin is liable to Snow for the Lutheran Hospital bill, which amounts to \$75.00 plus interest.

Conclusion

The trial court erred in finding Kevin liable for Susan's medical and dental bills. We reverse the small claims court's judgment of liability as to Susan's bills. However, as V.P.'s parent, Kevin is liable for V.P.'s medical bill. We affirm the judgment as to Kevin's liability for V.P.'s bill, and we remand for a calculation of interest upon that bill.

Affirmed in part, reversed in part, and remanded.

NAJAM, J., and RILEY, J., concur.